



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, NAGPUR.**

CRIMINAL APPLICATION (BA) NO.398 OF 2024
(Sumit s/o Suresh Sahare Vs. State of Maharashtra and anr.)

Office Notes, Office Memoranda of
Coram, appearances, Court's Orders
or directions and Registrar's order

Court's or Judge's Order

Mr. PR. Arbat, Advocate for the applicant.
Mr. K.R. Lule, APP for the State.
Ms R.M. Mishra, Advocate (appointed) for non-applicant No.2.

CORAM:- URMILA JOSHI-PHALKE, J.
DATED :- JULY 1, 2024.

By preferring this application, the applicant is seeking bail under Section 439 of the Code of Criminal Procedure. The applicant came to be arrested on 12/12/2022 in connection with Crime No.1199/2022 registered with Police Station Arvi, District Wardha for the offence punishable under Sections 363, 354A, 376(3), 376(2)(n) read with Section 34 of the Indian Penal Code and Sections 4, 6, 8, 12, 17, 18 and 21(1) of the Protection of Children from Sexual Offences Act, 2012.

2. The accusation against the present applicant is on the basis of statement of the victim which shows that on 11/12/2022 when she was alone at the house, she has received the phone call of the present applicant from the mobile phone of her friend and he called her at bridge and thereafter took her in one restaurant. In the said restaurant he has shown the Aadhar card of friend's friend and obtained the room and subjected the victim for

sexual assault. Initially, the report was filed under Section 363 and 366 of the IPC on the basis of complaint made by mother of the victim.

3. Learned Counsel for the applicant submitted that there was a love affair between the victim and the present applicant and out of love affair, she joined the company of the present applicant and there was physical relationship between them. Now, the investigation is already completed and charge-sheet is filed, further custodial interrogation is not required. In view of that, he be released on bail.

4. Learned Additional Public Prosecutor and learned Counsel for non-applicant No.2 strongly opposed the application on the ground that 14 years girl was subjected for sexual assault by the present applicant. The intention of the applicant can be gathered from the statement of the victim which shows that the applicant has shown the Aadhar card of friend's friend and obtained the room and took the victim there and subjected her for sexual assault.

5. It is further submitted that from the statement of the victim nowhere it reveals that there was love affair between the victim and the present applicant but the present applicant has called the victim through the mobile phone of the friend of the victim and took her and subjected her for sexual assault. Considering the *prima facie* case and considering the victim is only 14 years of

age and the nature of the offence is serious one, the application deserves to be rejected.

6. I have heard learned Counsel for both the parties. Perused the investigation papers especially the statement of the victim. From the statement of the victim nowhere it reveals that there was a love affair between the victim and the present applicant. Her statement nowhere shows that there was a friendship which resulted into the love affair, and therefore, she went along with the applicant but it shows that she has received the phone call of the present applicant and who called at her at bridge and thereafter took her and in a Royal restaurant he has shown the Aadhar card of the friend's friend and obtained the room and subjected her for sexual assault. Thus, the intention of the present applicant who is a grown up boy is cleared from the statement of the victim. Thus, considering a small victim girl aged about 14 years was subjected for sexual assault by the present applicant. The *prima facie* case is made out. In view of that, the application deserves to be rejected.

7. Hence, the application is rejected accordingly.

8. The fees of the appointed Counsel be quantified as per rules.

(URMILA JOSHI-PHALKE, J.)